

LEGAL ASSISTANCE OFFICES OF  
III CORPS, 1ST CAVALRY DIVISION, 4TH INFANTRY DIVISION  
(MECHANIZED)  
FORT HOOD, TEXAS 76544

COMMON LAW MARRIAGES

I. INTRODUCTION

Traditionally marriage is entered into through some type of formal ceremony. However, the State of Texas does not require any kind of formal proceeding in order for a marital relationship to exist. Such an informal marriage is called a common law marriage. Whether or not a common law marriage has been formed is determined on a case by case basis. A common law marriage forms upon the occurrence of certain events.

II. REQUIREMENTS FOR THE FORMATION OF A COMMON LAW MARRIAGE

Under the Texas Family Code, Section 1.91 (a)(2), a common-law marriage is formed when three events occur:

A. A couple makes an agreement to be married;

1. The agreement to be married must be unconditional and for the duration of the couple's lives and not for a specified time period.
2. The agreement must be for the relationship to begin immediately and not at some future date, such as on a wedding date.

B. The couple must live together in Texas as husband and wife; and

1. Cohabiting together in another state is not sufficient.
2. There need not be a sexual relationship.
3. There is no time requirement for living together. Thus, a couple who has lived together a week is considered to be just as married as a couple who has lived together for ten years.

C. The couple represents to others that they are married.

1. The court looks at the verbal and non-verbal communications of the couple.

2. The court looks at things such as how the couple introduces themselves, how others introduce the couple, the couple's reputation, and the couple's status on their tax returns.

### III. RECOGNIZING A COMMON LAW MARRIAGE

In order for a common law marriage to be legally recognized, there must be a declaration of marriage. A declaration of marriage is a sworn statement that must be filed with the county clerk's office. If a declaration of common law marriage is not commenced before the second anniversary of the date on which the parties separated and ceased living together, it is rebuttably presumed that the parties did not enter into an agreement to be married. An informal marriage, if created, is valid whether or not it is registered. The registration itself does not add further validity to the existence of the marriage. Registration simply eliminates the issue as to whether the relationship was one of marriage or only a live-in relationship.

### III. ENDING A COMMON LAW MARRIAGE

Ending a common law marriage is not as easy as forming one. The law does not recognize common law divorces. Once a common law marriage is formed, it may only be dissolved by a court of law. In fact, the dissolution of a common law marriage is no different than the dissolution of a formal marriage. There must be a judge ordered dissolution of the marriage and a distribution of the community property.

### IV. AVOIDING AND PROTECTING AGAINST A COMMON LAW MARRIAGE

A couple who wishes to live together and yet avoid the stigma of a common-law marriage may wish to take precautionary measures. One recommendation is for the couple to enter into a written agreement in which they both state that their cohabitation is not based on a present or future agreement of marriage. Another recommendation, in case a common law marriage is found, is for the couple to enter into a prenuptial agreement. However, the mere title of this document assumes that a marriage is anticipated. While these are recommendation for protecting yourself against a common-law marriage, neither recommendations has actually been tested in a court of law.

FOR ADDITIONAL INFORMATION CONTACT THE LEGAL ASSISTANCE OFFICES ON FORT HOOD: III Corps, Building 1001, Room C224, 287-7901/3199; 1st Cavalry Division, Building 28000, Room 1155, 287-6060; 4th Infantry Division (Mech), Building 410, Room 175, 287-1850.